

# FY14 Office of Acquisition and Property Management

## Government Shutdown Questions and Answers

---

[Contracting Before, During and After the Shutdown; Systems and Reporting; Charge Card; Financial Assistance; Suspension and Debarment; Fleet](#)

### CONTRACTING BEFORE THE SHUTDOWN

#### **1. What generally happens in the event of a lapse in appropriations and shutdown and what are key exceptions?**

In general, federal government activities that are not essential (i.e., necessary for the safety or human life and the protection of property or otherwise authorized by law) must cease. That means employees, contractors and cooperators:

- cannot work,
- cannot create new obligations,
- cannot make payments for funded obligations,
- cannot volunteer (employees, contractors, or cooperators, etc.)

That is, unless “authorized by law,” the Anti-Deficiency Act prohibits the federal government from obligating funds before an appropriations measure has been enacted and also from accepting “voluntary services.” See 31 U.S.C. §§ 1341 and 1342. In addition to prohibiting contract work from continuing after a shutdown, if federal staff members continue working when it is unclear that there will be an appropriation covering their salaries, this also could violate the prohibition.

The Act provides an exception for “emergencies involving the safety of human life or the protection of property.” However, “emergencies involving the safety of human life and the protection of property” do not “include the ongoing, regular functions of government, the suspension of which would not imminently threaten the safety of human life or the protection of property.” See 31 U.S.C. § 1342.

Also, a shutdown generally does not apply to activities funded by obligations validly incurred in an earlier fiscal year or by multi-year or indefinite appropriations. Accordingly, contracts that were previously funded by prior enacted appropriations may continue.

## 2. What are some general guidelines?

Here are a few guidelines to consider:

- If a contract or payment is needed to support an essential program like medicare or earthquake hazard monitoring, then supporting staff (e.g., contracting officer, COR/COTR, finance staff) are essential. They may or may not be needed on a full-time basis.
- If a contract is already funded, such as a construction contract, then:
  1. The COR/COTR/ Inspector may be called in intermittently to monitor the contractor's progress
  2. The CO may be called in intermittently to issue necessary contract modifications, which may include a suspension of work order if staff to monitor the contractor's progress cannot be made available
  3. Bureaus should combine as many of these duties as possible to a small number of people
  4. Invoices for these contracts will not be processed until appropriations are available to fund the administrative support
- If a contract supports an activity that is not funded by prior appropriations and not essential, such as a NPS maintenance or repair contract, then the staff who support the contract are not essential.
- Processing payments/authorizing drawdowns for grants or cooperative agreements is not an essential activity.

Please refer to the attached Decision Tree to help determine whether or not a contract may remain active during a shutdown.

## 3. What actions should a contracting officer take if there is a shutdown?

Contracting Officers (COs) should review all of their contracts to ensure that they include the following Federal Acquisition Regulation (FAR) clauses:

- **Termination for the Convenience of the Government** clause in FAR 52.249-1 through 5, as appropriate; **and** either
- **Suspension of Work** clause in FAR 52.242-14 (mandatory in fixed price construction and architect-engineering contracts); **or**
- **Stop-Work Order** clause in FAR 52.242-15 (optional in contracts for supplies, services, or research and development)

Terminations for convenience, stop-work orders, and suspension orders may be issued only if the contracts contain the appropriate clause. When appropriate, stop-work and suspension orders are preferable to terminations because they keep the contract active and avoid termination costs as well as the need for a re-procurement action.

If the above clauses are not already included in the contract, then the contracts should be modified on a bilateral basis to incorporate the appropriate clause(s). This should be done as a precaution to protect the Government's interests regardless of whether the contract supports an essential activity.

COs may draft stop-work and suspension of work templates in advance for possible use in contracts that are not already funded or do not support essential activities. For example, a stop-work order may need to be issued for non-essential contractor support services that will be suspended if a government facility is shut down and its federal employees are furloughed.

#### **4. What must a contracting activity do in order to shutdown?**

Bureau Contingency Plans must designate shutdown personnel, who will facilitate orderly shutdown of the contracting activities, including drafting and issuing of stop-work orders and other steps outlined in this guidance. Once the services of these employees are no longer required, they will be furloughed. The Office of Management and Budget may place a time limit on shutdown activities. Bureau Contingency Plans must identify essential activities and functions of the bureau that must continue during a lapse in appropriations, and identify contracts supporting those activities and functions. Work on those contracts can continue during the shutdown, and the bureau must identify any essential personnel, such as warranted COs and/or contracting officer's representatives, required during the shutdown in order to administer those contracts.

Work on contracts that are not funded by a lapsing appropriation (such as the fiscal year 2014 continuing resolution), such as projects that are fully funded, may continue, provided government oversight is not necessary to facilitate performance during the shutdown.

Contracting activity shutdown personnel must issue Stop Work or Suspension of Work orders on, or Terminate for the Convenience of the Government, all non-essential contracts funded by the 2014 continuing resolution, in accordance with FAR procedures. Once this work is completed, if the employees do not have responsibility for other essential work, they must cease work until recalled.

#### **5. What communications with contractors are allowed?**

Contractors may inquire about the status of their contracts prior to the shutdown. Contractors should be told that they will be notified in writing whether their contracts are affected by the shutdown.

If a determination is made that work must cease on a non-essential contract, then you may not suggest that the contractor continue to work, allow them to volunteer their services, or suggest that if they continue working they will be paid retroactively.

## CONTRACTING DURING THE SHUTDOWN

**6. Do federal and agency policies and guidance (such as FAR, DIAR, DIAPRs, DIGs) apply to contracting during shutdown?**

Yes.

**7. Who has contracting authority during a shutdown?**

Only warranted contracting officers have authority to sign contract actions.

**8. Can I award new contracts?**

A contract may be awarded during a lapse in appropriation **ONLY** if it is for goods and services that are deemed essential in accordance with your Bureau Contingency Plan for a Possible Lapse in Appropriations. Under authority of the Anti-Deficiency Act, contracting officers may obligate the Government for shutdown and essential activities even in the absence of an appropriation. However, contractors may not be paid until appropriations are enacted if processing of the payment requires government input.

That is, as noted, the Anti-Deficiency Act, 31 U.S.C. § 1342, provides that officers and employees of the federal government may accept voluntary services where there is (1) a reasonable and articulable connection between the function to be performed and the safety of human life or the protection of property, and (2) some reasonable likelihood that the safety of human life or the protection of property would be compromised in some significant degree by delay in the performance of the function in question. See Memorandum to Alice Rivlin, Director, Office of Management and Budget, from Assistant Attorney General, Office of Legal Counsel, Re Government Operations in the Event of a Lapse in Appropriations (August 6, 1995);

<http://www.opm.gov/furlough/furlough.asp#Appendix%20A-1>

Multi-year or other contracts that require newly obligated funds cannot be awarded. Contracts obligated with previous years' funds are unaffected by a lapse in appropriations because they do not require a new obligation. Contract extensions, exercise of renewal options, or any other new contract may not be executed unless supporting essential activities or functions.

For solicitations where a bid/proposal acceptance period is impacted, COs should issue a bilateral amendment with the vendor(s) involved to reestablish a new acceptance period to ensure further contract award evaluation is possible after appropriations are authorized.

**9. What about inspection/acceptance and receipt of deliverables?**

During the shutdown, Federal government offices are closed. Only employees designated by their bureau/office to perform essential services or those funded by non-lapsing appropriations will report to work. Therefore regular deliveries of supplies and services shall be suspended until the conclusion of the shutdown. Contractors should be informed of the shutdown and instructed not deliver goods or services until the conclusion of the shutdown. As with all correspondence, the contract files should document the telephone calls and emails between the contracting officer and the contractor. If a shutdown occurs, larger or more sensitive contracts should be modified to revise the delivery schedule for non-essential goods and services.

Inspection and acceptance should be completed if at all possible before the shutdown occurs. If this cannot be accomplished, contractors should be informed of the shutdown circumstance and informed that the inspection/acceptance procedures will be continued only after appropriations are enacted but will be extended by the additional number of days that the shutdown continues. Extended inspection and acceptance periods beyond the terms of the contract may not relieve the government of its prompt pay responsibilities.

**10. What if there is an emergency during the shutdown that requires contracting support?**

Bureau contingency plans must cover the possibility that an emergency could occur during the shutdown that requires contracting support, such as a fire or other natural disaster. Bureau plans must designate contracting personnel, such as contracting officers and contracting officer's representatives, to be in on-call status in case they are needed to come to work during the shutdown to provide support in an emergency.

**11. How will contractors communicate with Interior during the shutdown?**

Only employees identified by their bureaus to perform essential services will be on hand to communicate with contractors during a government shutdown involving a lapse in appropriations. Each bureau must have a list of otherwise-essential personnel that contractors may contact in its Bureau Contingency Plan. Contracting staff may not be deemed essential only for purposes of providing this communications point of contact.

**CONTRACTING  
AFTER THE SHUTDOWN**

**12. What happens after the shutdown, when Interior resumes operations?**

Contracting Officers must cancel stop-work and suspension of work orders, and modify contracts, as appropriate, to provide available funds. Additionally, COs should follow the

appropriate settlement procedures in FAR Part 49 for contracts terminated in whole or partially for the convenience of the Government.

## SYSTEMS AND REPORTING

### Contract Action Reporting (FPDS: Federal Procurement Data System – Next Generation)

**13. Must I report contract actions during the shutdown?**

Yes. If you award an action to support an essential activity you must report contract actions to the FPDS in accordance with FAR 4.6, and DIAPR 2008-08.

**14. Will FPDS Support be available during the shutdown?**

Yes. If you have issues reporting contract actions to FPDS you may contact the FPDS Support desk at 703-390-5360, or via email at [fpdssupport@gcefederal.com](mailto:fpdssupport@gcefederal.com).

### Other Acquisition Systems

**15. Will SAM, FBO, ESRS, FSRS, FBO, PPIRS, CPARS, be available during the shutdown?**

Yes, those government-wide systems will be available to support essential activities. If you need assistance with SAM, eSRS, FBO, or FSRS there are several ways you can get help. Please visit <https://www.fsd.gov/app/about> to choose the way you would prefer to get assistance. If you need assistance with PPIRS you should visit their websites for additional information. Links to all of these systems can be found at <https://www.acquisition.gov/>.

**16. Must I use these systems during the shutdown?**

Yes, If you are identified as essential and supporting essential activities during the shutdown, FAR and other Federal and Departmental policy will still apply as it relates to the procurement process, and the use of these systems.

## CHARGE CARD

**17. Will the GSA SmartPay Card function during a shutdown?**

The purchase, travel, fleet, integrated and cardless products will all continue to operate normally and that the banks will continue to provide service in accordance with the GSA

SmartPay 2 Master Contract. A/OPCs should remind cardholders that during a lapse in appropriations, GSA SmartPay cards may only be used to support essential functions or activities that are not funded by lapsed appropriations.

**18. Will the travel charge cards still function, too?**

Yes. The travel card will still function and vehicles can still be fueled using the fleet card, so no one will be “marooned” due to a non-functioning card. Travelers are required to pay their charge card bills whether or not their travel voucher has been paid.

**19. What about automatic payments?**

Cardholders should pay particular attention to “automatic” payments they have established with vendors using their purchase cards. In order to prevent purchases that are not proper under a shutdown from occurring, A/OPCs and cardholders may need to review these scheduled payments and take action to halt them, if appropriate.

**20. Where can I find additional information about Charge Card during a shutdown?**

GSA will be posting FAQs on its SmartPay website: <https://smartpay.gsa.gov/blogs/Program-Updates>.

## FINANCIAL ASSISTANCE

**21. How does a Federal government shutdown impact discretionary financial assistance programs?**

For financial assistance programs that are funded through annual appropriations, a Federal shutdown will cause a funding gap and a curtailment of bureau/office activities and services. During a lapse in appropriations, new program announcements shall not be posted on Grants.gov, new grant or cooperative awards may not be issued, the execution of new agreements may not be conducted, no renewals or amendments to add funds to a program/project are allowed, and staff may not obligate funds. All new discretionary activities must cease until a new appropriation is enacted by Congress.

The Anti-Deficiency Act prohibits Federal staff from obligating funds before an appropriations measure has been enacted, except as authorized by law.

The Act provides an exception for “emergencies involving the safety of human life or the protection of property.” However, “emergencies involving the safety of human life and the protection of property” do not “include the ongoing, regular functions of government, the suspension of which would not imminently threaten the safety of human life or the protection of property.” See 31 U.S.C. § 1342.

Federal financial assistance programs that were previously funded by the American Recovery and Reinvestment Act, Hurricane Sandy relief funding, or prior enacted appropriations may continue.

**22. How does a lapse in appropriations impact mandatory or earmark spending programs?**

Programs funded by non-lapsing appropriations may or may not be impacted by a Federal government shut-down caused by a lapse in appropriations. For example, although the funds needed to make disbursements to beneficiaries may be available automatically through electronic payment systems, pursuant to permanent appropriations, the payments may be processed by employees who are paid with funds provided in annual appropriations. In such a situation, the function of the mandatory program would cease until appropriations were enacted to the salaries of administering employees. Staff administrative planning and oversight of Federal financial assistance programs would cease unless the activities were determined to meet emergency activities and receive management approval.

The program activity for the recipients of mandatory or earmark spending programs that have permanent monies and are funded by laws other than annual appropriations would continue their implementation.

**23. Are there financial assistance activities where staff and support services are necessary to continue financial assistance essential services that may involve staff oversight and/or cooperative agreement substantial involvement (e.g. considered essential to protect the safety of human life and property)?**

There may be, but bureaus must identify such activities and related personnel and determine that the emergency threshold is met. A non-exclusive list of examples of financial assistance functions to conduct essential activities to the extent that they protect life and property include:

- (i) Activities essential to ensure public health and safety, including safe use of food, drugs, and safe use of hazardous materials;
- (ii) Protection of Federal lands, buildings, waterways, equipment and other property owned by the United States government;
- (iii) Law enforcement;
- (iv) Emergency and disaster assistance;
- (v) Activities that ensure the production of power and maintenance of the power distribution system; and

(vi) Activities necessary to maintain the protection of research property.

**24. If a financial assistance program does not meet the threshold for protection of life and property, should substantial involvement in the project activities (i.e., cooperative agreements) by employees continue?**

Federal involvement and technical assistance activities must cease during the furlough of employees during a Federal shutdown. When the Federal government resumes business upon enactment of appropriations, agency involvement may resume and the agency may negotiate with recipient(s) for a no cost extension to revise the implementation timeline of the project.

## **SUSPENSION AND DEBARMENT**

**25. For any Federal procurement or nonprocurement award activities which may be carried out during a Federal shutdown, must the provisions of FAR 9.4 and 2 CFR Part 180 still be followed?**

Yes. Any new awards that are made to support essential activities must only be made to responsible vendors or recipients.

## **FLEET**

**26. What happens in the event of a government shutdown for non-essential fleet management operations? i.e., non-law enforcement, security and emergency response.**

In the event of a government shutdown, all non-essential fleet management operations and uses of Departmental, both owned and GSA-leased, vehicles must cease until such time as the government commences operations and funding. Immediately upon notification of a lapse of appropriations, employees using government vehicles for non-essential operations should return all DOI provided vehicles to a government provided parking facility. Additionally, employees should return all government provided fleet cards and keys to a secure government location for the duration of the shutdown.

**27. What happens if I am using a government provided vehicle for travel during a shutdown?**

DOI employees on TDY travel must follow the guidance provided by the Office of Financial Management regarding official travel. As it relates to the government provided vehicle, if the travel is non-essential, the employee must return the vehicle, keys, and fleet card to the appropriate government facility until the government shutdown ends. Only travel for essential activities will be allowed during a shutdown.

**28. What if I have authorization for home-to-work use during a shutdown?**

In the event of a government shutdown, all non-essential home-to-work authorizations are suspended. The authorizations will immediately go back into effect after the shutdown ends.

**29. Can I use the Government Fleet card during a shutdown?**

Government provided fleet cards are only to be used for essential fleet management operations as determined in advance by your bureau/office, such as law enforcement, security, and emergency response. Uses for non-essential operation are not permitted during a shutdown, with the exception of using the fleet card to return vehicles to a government facility immediately upon notification of a lapse of appropriations.